HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

AND
HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT APPEAL NOS : 2503 AND 2504 OF 2005

Between:

Mary Bai Widow's Home, Kodavalur,

Rep. by its Chairman, Smt. Kalapati

Mary Suvarna Kumari.

..... APPELLANT/PETITIONER

AND

The District Collector, Nellore District,

Nellore and another.

.....RESPONDENTS/RESPONDENTS

::JUDGMENT::

Counsel for the Appellant : MR. M.V.S. Suresh Kumar
Counsel for Respondents : Government Pleader for Revenue

Dated: 21-12-2005

Per G.S.SINGHVI, CJ

These appeals arise out of order dated 22-11-2005 passed by the learned Single Judge in Writ Petition Nos. 24454 and 24455 of 2005.

The appellant was assigned an extent of Ac.4-93 in Survey No.380/A and Ac.0-22 in Survey No.380/B for establishment of a Widow's Home. Smt. Kalapati Mary Suvarna Kumari took possession of the land in her capacity as Chairperson of the Widow's Home and constructed the building. In 2005, a complaint appears to have been made to District Collector, Nellore (respondent No. 1) by the Members of Centenary Baptist Church, North Rajupalem, Kodavaluru Mandal that Smt. Kalapati Mary Suvarna Kumari was not taking interest in running the widow home and that she was alienating the land assigned for the purposes of construction of widow home. Upon this, respondent No. 1 vide letter dated 18-10-2005 directed respondent No. 2 to make an enquiry and pass order for resumption of the land. Respondent No. 2 recorded the statement of Smt. Kalapati Mary Suvarna Kumari, visited the widow's home and passed order dated
20-10-2005 for resumption of the land. The appellant challenged that order in Writ Petition No. 24454 of 2005.

It is also borne out from the record that after assignment of land to the appellant, the competent authority issued pattadar passbook No.356321. On 3-6-2005 respondent No.2 issued notice to Smt. Kalapati Mary Suvarna Kumari requiring her to produce the record pertaining to the widow home. On the date of

hearing i.e., 13-6-2005 the said Smt.Kalapati Mary Suvarna Kumari appeared before respondent No.2 and produced the relevant records. After nine days, respondent No.2 issued notice dated 22-6-2005 to Smt. Kalapati Mary Suvarna Kumari to show cause as to how pattadar passbook was issued in her name. Smt.Kalapati Mary Suvarna Kumari appeared before the officer and gave out that the pattadar passbook had been issued in the name of the institution and not in her personal capacity. She also submitted written representation dated 11-7-2005 reiterating this stand. However, vide order dated 1-7-2005 respondent No.2 cancelled the pattadar passbook. That order was challenged by the appellant in Writ Petition No.24455 of 2005.

On a consideration of the material placed before him and hearing the counsel for the parties, the learned single Judge dismissed Writ Petition No. 24454 of 2005 which was directed against order dated 20-10-2005 and disposed of Writ Petition No. 24455 of 2005 by giving liberty to the appellant to file appeal against cancellation of the pattadar passbook.

We have heard the learned counsel for the parties and carefully perused the record.

In our opinion, the order under challenge is liable to be set aside because while adjudicating the appellant's challenge to the order dated 20-10-2005, the learned Single Judge overlooked the core issue that respondent No. 2 had taken action for cancellation of the assignment under the dictates of his superior officer i.e. respondent No.1. It is an undisputed position that on receipt of the complaint made by the Members of the Centenary Baptist Church, Rajupalem, respondent No.1 had not only asked respondent No. 2 to make enquiry into the matter but also directed him to take action for cancellation of the assignment. In the face of the dictate given by his superior, respondent No. 2 was left with no discretion but to pass order for cancellation of the assignment. Therefore, the enquiry made by him by visiting the site and recording the statement of Smt. Kalapati Mary Suvarna Kumari was nothing but an empty formality. Therefore, the order passed by him for cancellation of assignment is liable to be declared as vitiated due to violation of the rules of natural justice.

There is another reason for nullifying the action taken by respondent No. 2 for cancellation of assignment of the land in favour of the appellant. Before ordering

cancellation of assignment, respondent No. 2 did not furnish copy of the complaint made to respondent No.1 and did not give opportunity to the appellant to represent its cause against the allegations contained in the complaint. Thus there is no escape from the conclusion that the appellant was not given reasonable opportunity of hearing. It is well settled that every quasi-judicial and administrative authority which is entrusted with the task of deciding the *lis* between the parties or passing an order affecting the right or interest of a person must act in consonance with the rule of *audi alteram partem*. This rule requires that no person shall be condemned unheard. The prolification of this rule by the judge made law makes it obligatory for every quasi judicial authority not only to give action oriented notice to the affected persons but also disclose the material sought to be used against him so that he can make effective representation against the proposed action. Therefore, non-disclosure of the contents of the complaint to the appellant and denial of opportunity of representation had the effect of vitiating order dated 21-10-2005 and the learned Single Judge committed a serious error by omitting to consider this important infirmity in the order of cancellation of assignment.

Insofar as order dated 01-07-2005 is concerned, we find that before cancelling pattadar passbook issued in favour of widow home, respondent No. 2 did give notice to the appellant but without applying his mind to the relevant documents and the fact that the passbook had in fact been issued in the name of widow home, the officer concerned cancelled the same. No doubt, the appellant could have challenged the order by way of an appeal, but in the peculiar facts of this case, we are satisfied that its failure to avail the alternative remedy cannot be treated as fatal to its challenge to the order of cancellation of pattadar passbook.

In the result, the appeals are allowed. The order of the learned single Judge is set aside. Consequently, Writ Petition Nos. 24454 and 24455 of 2005 filed by the appellant shall stand allowed and orders dated 20-10-2005 and
01-07-2005 passed by respondent No. 2 shall stand quashed.

While disposing of the appeals in the manner indicated above, we make it clear that if the competent authority discovers any new evidence showing that the appellant has disposed of the land assigned for establishing a widow home, then such authority shall be free to take appropriate action in accordance with law.

G.S.SINGHVI, CJ

Dt.21.12.2005

R.SUBHASH REDDY,J

ks/kvni/svs